by lawful condemnation. *Republican Valley R. Co.* v. *Fink*, 18 Neb. 82. But where both parties treat the appropriation as permanent, damages may be assessed with reference to future injuries. *Fowle* v. *New Haven & Northampton Co.*, 107 Mass. 352. Hence the full value of the land is a fair measure, the judgment operating as a bar to future action.

EASEMENTS — PRESCRIPTION — RIGHT OF WAY OVER RAILROAD PROPERTY. — A railroad company had owned for seventy-five years the fee of certain land. Persons living in the neighborhood had used it as a road for thirty or forty years. *Held*, that, since prescription rests on the presumption of a grant, which a railroad company has no power to make for other purposes than those for which it acquired the land, no prescriptive easement of right of way can be acquired against a railroad. *Blume* v. *Southern Ry. Co.*, 67 S. E. 546 (S. C.).

The South Carolina court permits the acquisition of a fee against a railroad by adverse possession, but distinguishes the case of an easement by reasoning based wholly upon the fiction of a lost grant. *Hill* v. *Southern Ry.*, 67 S. C. 548. See *Matthews* v. *Seaboard Air Line Ry.*, 67 S. C. 499. It therefore falls into the error of considering the matter as a question of what a railroad can transfer voluntarily, rather than what can be acquired against it by reason of its laches. The case illustrates the desirability of abandoning the fiction of a lost grant, and resting prescriptive easements upon the plain analogy between adverse user and adverse possession. *Krier's Private Road*, 73 Pa. St. 109. The better cases agreeing in result with the principal case proceed on the ground that a railroad's right of way, being of a public nature, is unaffected by adverse possession. *Southern Pacific Co.* v. *Hyatt*, 132 Cal. 240. A well-considered case holds that where a railroad constantly uses a track on its right of way an easement cannot be acquired thereon by prescription. *Pennsylvania R. Co.* v. *Freeport*, 138 Pa. St. 91. But this exemption should not be extended to unimproved railroad property, and the weight of authority is opposed to the reasoning of the principal case. *Gay* v. *Boston & Albany R. Co.*, 141 Mass. 407; *Pittsburgh, etc. Ry. Co.* v. *Crown Point*, 150 Ind. 536; *People* v. *Eel River & Eureka R. Co.*, 98 Cal. 665.

EVIDENCE — OPINION EVIDENCE — MARKET VALUE. — In an action against a common carrier for failure to deliver household goods shipped by the plaintiff, the evidence of a witness, who testified that he knew the market value of such articles from having received the market quotations which covered the date in question, was excluded. *Held*, that the evidence should have been admitted. *Chicago, Rock Island & Gulf R. Co.* v. *Clark*, 129 S. W. 186 (Tex., Ct. Civ. App.).

That this is a proper method of proof is undoubted. *Whitney* v. *Thacher*, 117 Mass. 523. The theory upon which the decisions usually proceed is that the testimony of the witness is opinion evidence, and is admissible as such, though his opinion be based exclusively upon market quotations and price-current lists. *Fountain* v. *Wabash R. Co.*, 114 Mo. App. 676. It has also been held that the market quotations may themselves be offered in evidence, if their general accuracy is attested. *Sisson* v. *Cleveland & Toledo R. Co.*, 14 Mich. 489; *Cliquot's Champagne*, 3 Wall. (U. S.) 114. And recent decisions indicate that this view is gaining recognition. *State ex rel. Moseley* v. *Johnson*, 144 N. C. 257; *Mt. Vernon Brewing Co.* v. *Teschner*, 108 Md. 158; *Western Wool Commission Co.* v. *Hart*, 20 S. W. 131 (Tex.). If the documents themselves are admitted, it must be as an exception to the hearsay rule, and one which falls under none of the recognized heads. But to admit reliable market reports, such as guide men in business transactions, does not involve the dangers against which the hearsay rule is directed. And the practical convenience of showing market

prices at any given time, without the necessity of calling an expert to pronounce an opinion, based perhaps exclusively on that same report, is a strong reason for such an exception.

INJUNCTIONS — ACTS RESTRAINED — WHO CAN ENJOIN PROSECUTION OF ACTION. — The defendant had obtained a divorce from her husband, who had then married the plaintiff. The defendant commenced an action to have the divorce decree vacated. The plaintiff sought to enjoin this action. *Held*, that the injunction should not be granted, as the plaintiff is not a party to the action. *Guggenheim* v. *Wahl*, 122 N. Y. Supp. 941 (App. Div.).

Where justice seems to require the relief, equity will frequently enjoin the prosecution of an unconscionable action. *Seager* v. *Cooley*, 44 Mich. 14. But the courts are slow to extend this remedy to others than parties to the suit pending, and from the reasoning of a few decisions it might seem that this relief is strictly confined to such parties. *Finegan* v. *City of Fernandina*, 18 Fla. 127. Yet there are decisions supporting the right of an interested third party to enjoin an action. A party with a mere equitable interest in land can enjoin the suit of one wrongfully claiming a lien on the land, though he is not named as a defendant in that suit, if its continuation will result in a confusion of rights. *Adams* v. *Harris*, 47 Miss. 144. A very real interest on the part of the outsider and very urgent reasons are necessary to move a court of equity to such interference. *Smith* v. *Cuyler*, 78 Ga. 654. In the principal case it would seem that the plaintiff's interest and the urgency of stopping the defendant's action would make it proper for equity to intervene.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — CONDITION AGAINST INCREASE OF HAZARD. — In an action on an insurance policy, the defendant alleged a breach of a provision against "increase of risk by any means within the control or knowledge of the insured," in that the insured and others had conspired to set fire to the premises. *Held*, that in the absence of an act physically affecting the property, no increase has occurred. *Ampersand Hotel Co.* v. *Home Insurance Co.*, 198 N. Y. 495.

This decision is an application of the general rule that policies are to be construed against the insurer. *Philadelphia Tool Co.* v. *British American Assurance Co.*, 132 Pa. St. 236. Following this rule the courts have restricted the meaning of the clause in question in various ways. It is held that something of duration is implied, and that mere temporary increase is not sufficient to avoid the policy. *Angier* v. *Western Assurance Co.*, 10 S. D. 82. An increase of risk caused by the making of necessary repairs is not a ground for avoidance. *Townsend* v. *Northwestern Insurance Co.*, 18 N. Y. 168. It has furthermore been held that a condition as to increase of hazard applies only to acts done on the premises of the insured or on property under his control. *State Insurance Co.* v. *Taylor*, 14 Colo. 499. It is not broken where the increase is due to some external cause beyond his control. *Breuner* v. *Liverpool & London & Globe Insurance Co.*, 51 Cal. 101. In no case has it been held that a mere mental state, unaccompanied by a physical act affecting the insured property, constitutes such an increase in the risk as will avoid the policy.

INSURANCE — DEFENSES OF INSURER — EFFECT OF INCONTESTABILITY CLAUSE ON FRAUD. — A life insurance policy provided, "If the premiums are duly paid as required, this policy after it has been renewed beyond the first year, shall be incontestable." The premiums were duly paid, and the policy was renewed beyond the first year. To an action on the policy, the insurer pleaded that the insured made fraudulent representations in his application. *Held*, that the plea is bad. *Citizens' Life Insurance Co.* v. *McClure*, 127 S. W. 749 (Ky.).

See NOTES, p. 53.